

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 SOUTHERN DIVISION

5 UNITED STATES OF AMERICA

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CHANGE OF PLEA PROCEEDINGS

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APPEARANCES:

19 FOR THE GOVERNMENT: Ms. Susan R. Redmond
20 Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
131 Clayton Street
Montgomery, Alabama 36104

22 FOR THE DEFENDANT: Mr. Kevin L. Butler, Attorney at Law
23 FEDERAL DEFENDERS
MIDDLE DISTRICT OF ALABAMA
201 Monroe Street, Suite 407
Montgomery, Alabama 36104

1 (The following proceedings were heard before the Honorable
2 Delores R. Boyd, United States Magistrate Judge, at
3 Montgomery, Alabama, on Wednesday, November 15, 2006,
4 commencing at 12:00 p.m.:)

5 MR. BUTLER: Your Honor, before beginning, I wanted to
6 apologize. I tried to move my case up before the judge I was
7 at, and I couldn't get it moved forward. So I'm sorry for the
8 delay.

9 THE COURT: Thank you very much. We begin this morning
10 with a scheduled Rule 11 proceeding for Hugh Edward Black,
11 United States versus Hugh Edward Black. The case number is
12 06cr171. Mr. Butler, the assistant federal defender, appears
13 with Mr. Black, and the United States is represented by Attorney
14 Susan Redmond.

15 Would you swear in the defendant, please.

16 THE CLERK: Raise your right hand, Mr. Black.

17 You do solemnly swear or affirm that the testimony you
18 give in this cause will be the truth, the whole truth, and
19 nothing but the truth, so help you God.

20 THE DEFENDANT: I do.

21 | THE COURT: Good morning, Mr. Black.

22 THE DEFENDANT: Good morning, ma'am.

23 THE COURT: Before I address you, let me address your
24 lawyer to be sure that he has advised you of your option to have
25 another judge handle this proceeding, a United States district

1 judge, and if you have authorized this Court, after being so
2 advised, to proceed. Mr. Butler?

3 MR. BUTLER: I have, Your Honor, and we have signed and
4 executed a consent-to-proceed form.

5 THE COURT: Thank you very much. Mr. Black, you've
6 been sworn to answer truthfully questions which will be posed to
7 you today. If any question just is not clear, please don't
8 hesitate to ask the Court to rephrase sufficiently for you to
9 understand. All right, sir?

10 Would you state your age and the length of any formal
11 education you have had.

12 THE DEFENDANT: Yes, ma'am. My age is 57. I have a
13 master's degree.

14 THE COURT: Have you been treated recently for any
15 mental illness?

16 THE DEFENDANT: Yes, ma'am. I have posttraumatic
17 stress disorder.

18 THE COURT: And tell me about the nature of your
19 treatment. Has it been institutional treatment, medication
20 only, consultations with a professional, whatever?

21 THE DEFENDANT: I have consultations four times a year,
22 I'm enrolled in the posttraumatic stress disorder program at the
23 Veterans Administration Hospital in Birmingham, and I am under
24 medication. I take Prozac.

25 THE COURT: All right. Did you take your Prozac this

1 morning?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And when you take Prozac, have you ever
4 noticed any reaction which impairs your ability to hear, to
5 understand, to reason?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: All right. And Mr. Butler, in your
8 consultations with Mr. Black are you able to represent that you
9 have not seen any or evidence of any impairment which would
10 cause us to delay this proceeding today?

11 MR. BUTLER: None, Your Honor. It is my position
12 Mr. Black is more than competent to proceed.

13 THE COURT: Thank you. Apart from the Prozac,
14 Mr. Black, you are not under the influence of any other kind of
15 drug or medication or alcoholic beverage?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. The indictment in this case has
18 been outstanding for a while. You have received a copy of that
19 indictment filed against you on July 11th of this year, correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And you've had enough time, have you not,
22 to review the written charges in that indictment with your
23 lawyer, the federal defender, Mr. Butler?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Are you fully satisfied with the counsel,

1 representation, and advice given to you in this case by
2 Mr. Butler?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And did you authorize him to confer with
5 the lawyer for the United States in an effort to reach the plea
6 agreement which is now before this Court?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Before you signed your name to the
9 agreement, did you assure yourself that you understood its
10 provisions by either reading it yourself or also having it read
11 to you, explained, and discussed with you by your lawyer?

12 THE DEFENDANT: Yes, ma'am, I fully understand.

13 THE COURT: Thank you. And you are here voluntarily
14 today, not because anyone has made a promise to you that's not
15 included in this plea agreement?

16 THE DEFENDANT: Yes, ma'am. No promises.

17 THE COURT: All right. Under the plea agreement, just
18 to be absolutely sure that you understand what you have agreed
19 to do, you have agreed to plead guilty to count one and to count
20 two of the indictment and to pay restitution in the amount of
21 \$32,283 to the United States or to Karen Marie Black, as may be
22 requested at sentencing by the government. Is that correct,
23 your understanding as well?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And in return for that, the government has

1 assured you of certain sentencing considerations. First, let me
2 be sure that Mr. Butler talked with you about the fact that
3 there are United States sentencing guidelines that are
4 considered advisory but that the United States district judges
5 try to consider in setting the proper sentence.

6 THE DEFENDANT: Yes, ma'am. He did discuss that with
7 me.

8 THE COURT: And he's told you, has he not, that he
9 really can't tell you precisely where you are going to fall on
10 those guidelines? He can give you today his best judgment, but
11 not until the probation office does a complete background
12 investigation can he or the attorney for the United States or
13 this Court assure you exactly what the recommended guideline
14 is. You understand that, don't you?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: With that understanding, the government
17 tells you in this plea agreement that it will recommend and
18 agree that you should receive a two-level reduction in whatever
19 that guideline is simply because you're assuming responsibility
20 and that at sentencing you can expect the government to move for
21 another reduction of one level after deciding whether your
22 cooperation and your prompt acceptance of responsibility helps
23 them save their resources. That's your understanding as well?

24 THE DEFENDANT: That's my understanding, Your Honor.

25 THE COURT: And additionally, the United States intends

1 to recommend a sentence for you at the bottom of whatever
2 sentencing guideline might apply. Is that your understanding as
3 well?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Now, this is a good time for me to be sure
6 you understand that your plea agreement is being submitted to
7 the Court under a rule of our Federal Rules of Criminal
8 Procedure which will allow you to withdraw or take back the plea
9 and go to trial if the assigned district judge does not go along
10 with what's recommended. That's Rule 11(c)(1)(C). Is that
11 clear to you too?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: All right, then. This written plea
14 agreement represents in its entirety all you can and should
15 expect from the United States. In other words, there will not
16 be a verbal agreement that can be enforced, a side agreement
17 that can be enforced. Is that clear?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: You would be pleading guilty under this
20 plea agreement to what's considered a felony. When you plead
21 guilty to a felony, understand that you will be deprived of some
22 rights that many people consider to be valuable civil rights,
23 such as the right to vote, the right to hold public office, the
24 right to serve on a jury, and the right to have in your
25 possession any kind of firearm. Clear?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Count one of this indictment charges Social
3 Security fraud in violation of Title 42 of the United States
4 Code at Section 408(a)(5). Here is the maximum penalty under
5 that statute: not more than five years, not more than \$250,000
6 or twice the gross gain to you as the defendant or twice the
7 gross loss to the victim in this case, not more than three years
8 on supervised release, and a \$100 assessment fee. The judge who
9 sentences you has the discretion to set a fine and to set a
10 prison term.

11 For count two, which charges you with making a false
12 statement, the maximum penalty is not more than five years, not
13 more than \$250,000, not more than three years on supervised
14 release, and a \$100 assessment fee. Understood?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You are in federal court where there is no
17 longer a system of parole; so should you receive any time in
18 prison, understand that you would be expected to spend all of
19 that time. Supervised release, which is a part of the maximum
20 penalty for both of these counts, is a time spent under strict
21 terms and conditions set for you by the probation office. If
22 you violate any of those conditions, understand that you could
23 be given additional time in prison. Is that clear too?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: At page 5 of your plea agreement you are

1 giving up the right to take an appeal from this Court to a
2 higher court or to attack your conviction and sentence in this
3 Court through a collateral means. You understand that as well?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Right now you stand before the Court on a
6 plea of not guilty, which means that you are presumed to be
7 innocent. And that means it is up to the United States to prove
8 your guilt beyond a reasonable doubt at a trial by jury. At
9 such a jury trial, you would be present. You would have the
10 right to the continuing assistance of a competent lawyer whether
11 or not you could afford to hire him. You would have the right
12 to have your lawyer examine the witnesses who appear against
13 you. And if you believe that there were witnesses you should
14 bring in, the court would accommodate that by summoning those
15 witnesses into court to testify. But remember, you wouldn't
16 have to put on a single witness. That's the burden of the
17 United States. You would have the constitutional right to
18 testify yourself, but you would also have the constitutional
19 right not to testify. And if you exercised that choice, the
20 United States would not be able to use that fact against you;
21 that is, to use against you your choice not to testify.

22 All of these rights are associated with a trial by
23 jury. When you decide to plead guilty as you have decided today
24 and you do plead guilty, you will not have a trial by jury and,
25 of course, you will not have any of those rights I have just

1 described. That should be clear. Correct, Mr. Black?

2 THE DEFENDANT: Yes, ma'am, that's correct.

3 THE COURT: This is an appropriate time for me to be
4 sure you understand just what it is the United States would have
5 to prove if your case proceeded to trial. For the fraud, Social
6 Security fraud indicted in count one, there are two things the
7 United States would have to prove: one, that you made a false
8 statement and representation of a fact which is considered a
9 material fact; two, that the material fact was used in order to
10 determine rights to get a Social Security payment. Understood?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: If the United States convicted you or tried
13 to convict you for making the false statement indicted in count
14 two, there are four elements to that offense; and the United
15 States would have to prove each and every one beyond a
16 reasonable doubt. First, that you made and used a false writing
17 and document. Two, that the writing and document contained a
18 materially false, fictitious, and fraudulent statement. Third,
19 that the writing and document involved a matter within the
20 jurisdiction of the executive, legislative, and judicial branch
21 of the government of the United States. And fourth, that the
22 defendant, you, Mr. Black, did so -- that is, you made the false
23 statement -- knowingly and willingly, knowing it to be a
24 materially false statement. Is that clear?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Now, before the Court can accept a change
2 in your plea, it must receive from you sworn testimony which
3 provides some basis for the Court to believe that the United
4 States would in fact be able to prove each of those elements of
5 the two offenses indicted against you. You are charged with
6 offenses occurring from on or about October 21, 2002, and
7 continuing until December 21, 2004. Let me hear from you first
8 in your own words what it is you did that has you here to plead
9 guilty.

10 THE DEFENDANT: I made a false statement.

11 THE COURT: To whom and what was the nature of the
12 statement?

13 THE DEFENDANT: I made a false statement to the Social
14 Security Administration.

15 THE COURT: Did that false statement have to do with
16 any payment of funds coming from Social Security?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And in particular, did you make a false
19 statement that entitled someone else to money that you received?

20 THE DEFENDANT: Would you please repeat that, ma'am?

21 THE COURT: Sure. You made a false statement that
22 ended up getting money to you or to someone else? Based on your
23 false statement, did you in fact receive a payment from Social
24 Security?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And was that a payment that you were
2 entitled to or somebody else was entitled to it?

3 THE DEFENDANT: Someone else.

4 THE COURT: Who was that person?

5 THE DEFENDANT: Karen Black.

6 THE COURT: All right. So you made a false statement
7 knowing that it was false?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: As a result of your false statement, Social
10 Security made a check or other payment that should have gone to
11 Karen Black, and you got it?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And you knew that you were using that
14 payment for yourself?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Let me allow the United States, if it deems
17 necessary, to make any further inquiry.

18 MS. REDMOND: Mr. Black, where were you living when you
19 made application for benefits for Karen Black to Social
20 Security?

21 THE DEFENDANT: In Dothan, Alabama.

22 MS. REDMOND: Within the Middle District of Alabama?

23 THE DEFENDANT: Yes, ma'am.

24 MS. REDMOND: And at some point did you move from
25 Dothan?

1 THE DEFENDANT: Yes, ma'am.

2 MS. REDMOND: All right. And where did you move, sir?

3 THE DEFENDANT: To Chilton County, which is still where
4 I live.

5 MS. REDMOND: All right. And is that also within the
6 Middle District of Alabama?

7 THE DEFENDANT: Yes, ma'am.

8 MS. REDMOND: All right. And was it in Chilton County
9 that you, in fact, made the false writing or document?

10 THE DEFENDANT: No, ma'am. It was in Houston County,
11 in Dothan.

12 MS. REDMOND: Okay. And was that between October 21st,
13 2002, and December 21st, 2004?

14 THE DEFENDANT: Yes, ma'am.

15 MS. REDMOND: All right. And the monies that you
16 received, you used those monies for your own benefit?

17 THE DEFENDANT: Yes, ma'am.

18 MS. REDMOND: Okay. Judge, I believe we're satisfied.

19 MR. BUTLER: One additional thing. Everything that
20 both the Court and the United States has just explained to you,
21 you did so knowingly and intelligently. You were aware of what
22 you were doing.

23 THE DEFENDANT: Yes, sir. Yes, sir.

24 MR. BUTLER: Thank you. Nothing further.

25 THE COURT: Thank you, Mr. Butler. The Court can take

1 judicial notice that a Social Security payment involves a matter
2 within the jurisdiction of the government of the United States.

3 Mr. Black, before I ask you to change your plea, if
4 that's what you still want to do, let me be sure that you don't
5 have any lingering question either about the plea agreement or
6 about what has happened thus far today.

7 THE DEFENDANT: No, ma'am. No questions.

8 THE COURT: All right, now. Are you ready now, then,
9 to enter a change in your plea to this two-count indictment?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: How do you now plead?

12 THE DEFENDANT: Plead guilty.

13 THE COURT: Your guilty plea is now a part of the
14 record. The Court is satisfied from your sworn testimony and
15 thus makes the following findings in your case. The Court finds
16 that this defendant is fully competent and capable of entering
17 an informed plea. The Court finds further that the defendant,
18 Hugh Edward Black, is aware of the nature of the charges pending
19 in this indictment and the consequences of the plea and that his
20 plea of guilty to both counts of this indictment is a knowing
21 plea, it is a voluntary plea, and it is a plea which is
22 supported by an independent basis in fact containing each of the
23 essential elements of the offenses charged in the indictment.
24 Therefore, to the extent of this Court's authority as a
25 magistrate judge, your plea, Mr. Black, is hereby accepted and

1 the Court refers you to the assigned district judge who will
2 review the plea and make a final judgment of your guilt.

3 What happens now is the preparation of a presentence
4 report by the probation office. It will be in writing. You
5 will be asked to give information for that report, which will
6 delve into your background more deeply. You have the right to
7 insist that your lawyer be present at the time that you give
8 information for the report. You and your lawyer will see the
9 report in writing. If there is anything that needs to be
10 objected to, your lawyer will have the chance to file objections
11 and he will be heard on those objections by the district judge.
12 That judge will also give you an opportunity to speak for
13 yourself and to give your lawyer an opportunity to speak for
14 yourself before he actually sentences you. Your sentencing will
15 be in about 70 days, maybe 90 days or thereabouts. Your lawyer
16 will tell you precisely when.

17 Because you have now pled guilty to a felony, the Court
18 must decide your status pending sentencing. You have been on
19 pretrial release since August 2, 2006. And the Court is now
20 reviewing a status report, which advises that you have indeed
21 met all the conditions for your release; that you have been
22 compliant, causing no supervision problems; and therefore, it is
23 the recommendation of your probation officer that you be
24 continued on the same conditions previously imposed pending
25 sentencing.

1 Does the United States wish to be heard?

2 MS. REDMOND: No, Your Honor.

3 MR. BUTLER: Your Honor, the defendant may. May I have
4 one moment?

5 (Brief pause)

6 MR. BUTLER: Your Honor, I apologize. Mr. Black is a
7 truck driver by trade. The conditions on his supervised release
8 are such that he has been required to reside within the Middle
9 District of Alabama. As there have been no violations of his
10 supervised release and though I'm not trying to minimize his
11 conduct -- and because this isn't a crime of violence and/or a
12 controlled substance offense, we were wondering if the Court, on
13 an oral motion, would be willing to consider modifying his
14 conditions so as to allow him to drive a truck to support
15 himself. He can't leave the Middle District as of right now.

16 THE COURT: Where is your truck driving business? That
17 is, where are you ordinarily traveling in pursuit of your
18 employment?

19 THE DEFENDANT: I can probably pursue a job that would
20 limit me to the Southeast. Florida, Georgia, Alabama.

21 THE COURT: Since I've had you on pretrial release,
22 have you just limited your truck driving to in the state of
23 Alabama?

24 THE DEFENDANT: I haven't worked, ma'am.

25 THE COURT: All right.

1 MS. REDMOND: Judge, if I may be heard. At the time
2 that the indictment was returned and arraignment was held, there
3 was no indication that the defendant was a truck driver at that
4 point. He had had a job as a caretaker, for lack of a better,
5 for a business property. So this is the first that the
6 government has even heard that he is now a truck driver.

7 MR. BUTLER: And I am -- this was raised to me about
8 three weeks into my representation of him. The government is
9 accurate. This isn't a skill that he does, but he would like to
10 pursue to gain -- I mean to garner income while sentencing is
11 pending.

12 THE COURT: The Court is reticent to authorize this
13 without --

14 MR. BUTLER: I understand.

15 THE COURT: -- the probation officer having an
16 opportunity to sit with Mr. Black, getting a clear
17 understanding --

18 MR. BUTLER: Yes, ma'am.

19 THE COURT: -- on whether he would be on his own,
20 whether he would be working with a company. So Mr. Butler, you
21 may have him confer with the probation officer after this
22 proceeding. Right now the Court, unless there is objection from
23 the United States, will allow you to be released on the same
24 conditions set for you August 2 and will consider any
25 modification upon a report from the probation officer. Now,

1 Ms. Thompson isn't here, but we do have representatives of the
2 probation officer available. And you can take that matter up
3 with Ms. Thompson, your assigned officer, afterwards.

4 MR. BUTLER: Thank you, Your Honor.

5 THE COURT: All right, then. The Court, after
6 considering the available evidence that the defendant is not
7 likely to flee or pose a danger to the safety of any person or
8 the community, hereby orders that he be released and continued
9 under the same conditions imposed on August 2, 2006.

10 MR. BUTLER: Yes, Your Honor.

11 THE COURT: Thank you. Anything else for Mr. Black?

12 MR. BUTLER: No, Your Honor.

13 THE COURT: All right. Thank you.

14 MS. REDMOND: Judge, that's all I have before the Court
15 this afternoon. May I be excused?

16 THE COURT: Yes. Thank you, Ms. Redmond.

17 MS. REDMOND: Thank you.

18 (Proceedings concluded at 12:25 p.m.)

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TRANSCRIBER'S CERTIFICATE

2 I certify that the foregoing is a true and correct
3 transcript, to the best of my ability, from the stenographic
4 notes provided to me by Official Court Reporter James R.
5 Dickens.

6 This 23rd day of May, 2008.

/s/ Risa L. Entrekin
Registered Diplomatic Reporter
Certified Realtime Reporter
Official Court Reporter